

108TH CONGRESS  
1ST SESSION

# S. 1616

To amend the Employee Retirement Income Security Act of 1974 to prevent the preemption of State community property law as it relates to non-forfeitable accrued retirement benefits.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2003

Ms. LANDRIEU introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to prevent the preemption of State community property law as it relates to nonforfeitable accrued retirement benefits.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. STATE COMMUNITY PROPERTY LAW RIGHT TO**  
4 **RETIREMENT BENEFITS NOT PREEMPTED BY**  
5 **ERISA.**

6 (a) IN GENERAL.—Section 514(b) of the Employee  
7 Retirement Income Security Act of 1974 (29 U.S.C.  
8 1144(b)) is amended—

1           (1) by redesignating paragraphs (8) and (9) as  
2           (9) and (10), respectively; and

3           (2) by inserting after paragraph (7) the fol-  
4           lowing:

5           “(8)(A) Except as provided in subparagraph (B), if—

6           “(i) under the community property laws of any  
7           State the spouse of a participant of a pension plan  
8           is entitled to any portion of the participant’s non-  
9           forfeitable accrued benefit; and

10           “(ii) the spouse’s interest in such benefit under  
11           such laws passed to an individual other than the  
12           participant by reason of the death of the spouse;

13           then subsection (a) shall not apply to an order issued by  
14           a court of such State disposing of such interest.

15           “(B) Nothing in subparagraph (A) shall be construed  
16           to allow a claim—

17           “(i) for a benefit directly from a pension plan;

18           “(ii) against a qualified joint and survivor an-  
19           nuity or qualified pre-retirement survivor annuity of  
20           a surviving spouse of the participant; or

21           “(iii) against the participant during his or her  
22           lifetime.”.

1       (b) EFFECTIVE DATE.—The amendments made by  
2 this Act shall apply to orders regarding the estates of de-  
3 cedents dying after the date of enactment of this Act.

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